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In the
Supreme Court of the United States

October Term, 1963

No. 179

STANLEY M. CORBETT, GUARDIAN OF THE PROPERTY OF CONSTANTINE NEONAKIS, A MINOR,

Appellant,

vs.

VIOLA STERGIOS, a/k/a VIOLA STERYIAKIS,

Appellee.

Appeal from the Supreme Court of the State of Iowa

BRIEF OPPOSING MOTION TO DISMISS APPEAL

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In the
Supreme Court of the United States

October Term, 1964

No. 1215

STANLEY M. CORBETT, GUARDIAN OF THE PROPERTY OF CONSTANTINE NEONAKIS, A MINOR,

Appellant,

vs.

VIOLA STERGIOS, a/k/a VIOLA STERYIAKIS,

Appellee.

Appeal from the Supreme Court of the State of Iowa

BRIEF OPPOSING MOTION TO DISMISS APPEAL

On July 9, 1964, Appellee filed her Motion to Dismiss Appeal pursuant to Rule 16, Revised Rules of the Supreme Court of the United States. Pursuant to that same rule Appellant submits the following Brief Opposing Motion to Dismiss Appeal.

A. Appellee incorrectly asserts that Appellant's appeal does not present a substantial federal question.

Appellee argues in Division A of her Motion to Dismiss Appeal that the only issue determined by the Iowa Supreme Court on the appeal of this cause was whether

Appellant had introduced sufficient evidence as to whether reciprocal rights of inheritance existed between the Kingdom of Greece and the State of Iowa. Appellee contends on page 2 through page 4 of her Motion to Dismiss Appeal that since the trial found that Appellant had not introduced evidence on whether reciprocal rights of inheritance exist, and this holding was affirmed by the Iowa Supreme Court, no substantial federal question is presented to give this Court jurisdiction for an appeal under 28 U. S. C., Section 1257(2).

There can be no question that Section 567.8, Code of Iowa, 1958 (set out in full in Appendix III, Appellant's Jurisdictional Statement) provides that nonresident foreign aliens may inherit property in Iowa only if they prove the existence of a reciprocal right upon the part of United States citizens to inherit in the country of the alien's residence, which in this case is Greece. Also, there can be no question that Section 567.8 of the Iowa Code places the burden of proving such reciprocal rights upon the Appellant.

Appellant made no attempt to introduce evidence of reciprocal rights, but chose to stand on rights granted in the treaty between the United States and Greece (the pertinent parts of which are set out in Appendix IV of Appellant's Jurisdictional Statement). Appellant contended at the trial and ever since, that the treaty, and particularly Article IX thereof, nullified Section 567.8 of the Code of Iowa.

For Appellee to argue that the Iowa Supreme Court simply determined that Appellant failed to prove a factual

question, Appellee must necessarily ignore a substantial portion of the opinions of the Courts below. Before the Courts below could determine that Appellant had not proven the existence of reciprocal rights, both the Trial Court and the Iowa Supreme Court had to make the determination that the treaty did not nullify the requirement of Section 567.8, Code of Iowa, 1958, that Appellant prove the existence of reciprocal rights. As can be seen by an examination of the Judgment and Decree of the Trial Court set out in Appendix A of Appellant's Jurisdictional Statement, and particularly pages A24 and A25 thereof, the Trial Court examined the treaty and the statute and found that the state statute was not nullified by the treaty. Since the Trial Court found that the requirement of Section 567.8 was not nullified by the treaty, the Trial Court held that Appellant must prove the factual question as to the existence of reciprocal rights of inheritance. Since Appellant made no attempt to prove the existence of reciprocal rights, but relied on treaty rights as nullifying Section 567.8, Code of Iowa, the Trial Court dismissed Appellant's Petition.

This same reasoning was followed by the Iowa Supreme Court. Before it could affirm the Trial Court's finding that Appellant had not fulfilled his burden of proof under Section 567.8, Code of Iowa, the Supreme Court of Iowa first determined that said section was not nullified by the treaty. As will be seen from an examination of the opinion of the Iowa Supreme Court in this cause, reported in ___ Iowa ___, 126 N. W. 2d 342 (1964), and set out in Appendix I of Appellant's Jurisdictional Statement, much attention was given by the Court to the ques-

tion of whether the treaty nullified Section 567.8, Code of Iowa. The discussion by the Iowa Supreme Court on this point is set out in pages A3 through A8 of Appendix I to Appellant's Jurisdictional Statement. The five man majority decided the treaty did not nullify the statute. The four man minority found that the treaty did nullify the necessity of proving reciprocal rights of inheritance (see pages A14 through A18 of Appendix I to Appellant's Jurisdictional Statement). The confusion of the majority in arriving at their conclusion on this point is best illustrated by the following statement taken from the Opinion (page A8 of Appendix I, Appellant's Jurisdictional Statement):

> "The laws of the State of Iowa are not in conflict with the treaty as a matter of law, in connection with the case at bar. It is a question of fact."

It would appear that in stating whether state statutes conflict with federal treaties is a question of fact, the majority of the Iowa Supreme Court has enunciated a new and radical principle of constitutional law.

Thus, before determining that a factual question was presented for review, both Courts below found that there was drawn into question the validity of Section 567.8, Code of Iowa, 1958, on the ground that is repugnant to the Treaty of Friendship, Commerce and Navigation between the United States and Greece. The state courts found the statute to be valid. A substantial federal question is therefore presented giving rise to an appeal under 28 U. S. C., Section 1257 (2).

B. Appellee incorrectly asserts that the federal question sought to be reviewed was not properly raised in the Trial Court and on appeal to the Supreme Court of Iowa.

As set out on page 4 of the Motion to Dismiss Appeal, the Appellant on appeal to the Supreme Court of Iowa assigned as its ground of error the following:

> "The Court erred in holding that Treaty between the United States and Greece did not allow plaintiff's ward, a citizen of Greece, to take an interest in the estate of his adopting father."

What Appellee in her motion neglects to point out to this Court, however, is the various sub-points which were relied upon by Appellant in its appeal to the Iowa Supreme Court. As is set out by the opinion of the Iowa Supreme Court, specifically as shown on page A3 of Appendix I to Appellant's Jurisdictional Statement, there were four questions raised in support of the general ground of error, the first being:

> "1. Treaties entered into by the United States with foreign governments are the supreme law of the land, and insofar as state constitutions, statutes and common law are in conflict, they are suspended or invalidated."

The Iowa Supreme Court spent considerable time in discussing this point as will be seen by that portion of the opinion set out in pages A5 through A8, Appendix I to Appellant's Jurisdictional Statement.

The statement of Appellee on page 5 of her Motion to Dismiss Appeal that the Appellant is now for the first time raising the question of the validity of Section 567.8, Code of Iowa, is obviously in error. This issue was raised

in the Trial Court and was discussed in the Judgment and Decree of the Trial Court set out in Appendix II to Appellant's Jurisdictional Statement. At page A25 thereof, the Trial Court stated:

> "A reading of ART. IX, Subsection 1(a), shows that with respect to the acquisition by nationals of Greece of immovable property located in the United States, the laws of the states are effective and recognized by the treaty. This recognition will extend to and include the section of the law of the State of Iowa with which we are concerned here, Sec. 567.8, *and the treaty, therefore, does not make ineffective or attempt to nullify that law,* nor the burden placed upon the plaintiff by that law." (Emphasis ours.)

Thus, it can be seen that the question as to whether the treaty nullified Section 567.8, Code of Iowa, 1958, was raised in the trial of the cause, and the issue was squarely presented and discussed by the Trial Court in its Judgment and Decree, and by the Supreme Court of Iowa. The issue having been presented in the Trial Court and presented on appeal, it must be considered to have been properly raised for purposes of this appeal.

Respectfully submitted,

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